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ADJUSTMENT OF CLAIMS AGAINST THE UNITED STATES BASED ON UNCOMPLETED WAR CONTRACTS.

It was said recently by Hon. Thomas M. Henry, an attorney of Washington, D. C., practicing in the United States Court of Claims, that "the national government is or should be in no better position regarding its obligations than are the citizens of this republic." The statement seemed to us so reasonable that we decided to lay emphasis at this time on the means Congress has provided to meet the losses sustained by business men in preparing to fulfill the terms of contracts for war supplies, which were cancelled after the armistice went into effect.

It seems that in the rush of war preparations, the officers in charge of the quartermaster's division were in the habit of making contracts in the name of the chief officer of any particular supply depot that made proper requisition. This practice, it seems, was in the teeth of Sec. 3744, Revised Statutes, which does not permit one officer to contract for another. The result was that after the armistice, those holding uncompleted contracts with the government, signed by deputies for the chief officers authorized to contract, have been unable to collect anything for the supplies which have been manufactured and undelivered, or for the great expense involved in the investments necessary to handle the government orders.

So long as supplies were received and accepted under these orders, the comptroller ignored the infirmity in the contract on the ground that the government was liable for all goods actually accepted under such contracts, but on November 25, 1918, he made the following ruling:

"As to outstanding contracts not signed by the officer named as contracting officer, their validity is open to question, and is dependent upon proof of the fact, if it be a fact, that the officer who signed was a duly authorized contracting officer and made the agreement with the contractor and that the officer named as contracting officer did not. The statute clearly requires the act of one officer in the making and signing and wholly negatives the idea of one officer signing for another.

"The purpose of section 3744, Revised Statutes, has been so clearly stated many times by the Supreme Court, and the result of failure to comply with it has been so often pointed out by that court, that I do not cite or discuss the cases. The decisions of this office have followed the interpretation of the statute as announced by that court and have been uniform for 40 years or more.

"This office is anxious to do all in its power to meet the situation referred to in your letter and to facilitate settlement with contractors legally entitled to payment on the termination of their contracts. Cases involving only equitable claims cannot be settled by executive officers without new legislation."

This ruling has resulted in great hardship to the loyal merchants and manufacturers, who, many of them, went to great expense to adapt their business to the government necessities. Among the many claims filed with the quartermaster's division from all over the country we shall call attention to just one case, in order to give the reader some conception of the great injustice likely to result unless prompt action is taken by attorneys under present legislative provisions or unless Congress passes additional remedial legislation. Take, for instance, the case of the Hackney Wagon Co., Wilson, N. C. In a letter to Senator Overman, the president of this company said:

"To be perfectly plain and frank, we are going to state that the Hackney Wagon Co. has tied up in investments of war materials for Government escort wagons and parts and in investments of equipment and machinery to make these wagons and parts approximately $400,000, and by canceling all of these orders it has placed the Hackney Wagon Co. in a very embarrassing po-

sition with the banks who financed us in this undertaking. Our unfilled contracts with the Government amount to approximately $600,000. These were to be completed by June 1, and we would have made shipments of approximately $100,000 per month and would have completed these contracts by that time.

"Since cancellation of contract we have made claim on the War Department for approximately $235,000, which is the actual inventory of all material on hand, with no cost or overhead charges added on direct cost of raw materials and manufacturer's labor cost included, less the salvage we could use on this material.

"It strikes us, in order to relieve these embarrassing conditions to ourselves and other small manufacturers, that the Government should either authorize us to complete these contracts or pass some legislation immediately whereby we could receive remuneration for this expenditure which we have gone to in purchasing these materials and making the necessary changes to get in shape to do this work.

"We will further state that these orders came to us unsolicited; we were in a way commandeered by the War Department to put 50 per cent of our output on this work."

The errors made in the execution of government contracts by deputies instead of by the proper officer were due to the inexperience of the men who came into the Quartermaster's service from civil life. Where the contract was properly executed, the government is able to take care of the claims by means of supplemental agreements, whereby the contractors, for a fair consideration, agree to a cancellation of the original contracts. But the great majority of the contracts made by the Quartermaster's Division are not of this kind and require legislation to give the relief necessary to do justice.

Another class of cases arises out of a misapprehension as to the law governing the use of purchase or procurement orders in lieu of contracts signed by both parties. The statutes in regard to different bureaus of the War Department differ widely on this point; for instance, the Quartermaster Corps is authorized to make contracts in any amount where deliveries are to be made within sixty days under such regulations as to form of contract as the Quartermaster General may prescribe. (Army appropriations act for the fiscal year 1916, approved March 4, 1915.) The engineers, however, may not expend any amount in excess of $500 out of War Department appropriations, except by formal contract executed as prescribed by section 3744 of the Revised Statutes. Nevertheless, owing to a misunderstanding, the engineers made all of their purchases by means of purchase orders, signed by the contracting officer but not by the contractor. This was unimportant so long as deliveries were accepted, but now that no further deliveries are desired, the contractor discovers that, under the ruling of the Comptroller of the Treasury, he has nothing on which he can base a claim against the government for compensation for his expenditures in carrying out the order.

To meet the situation thus revealed, Congress, at its last session, passed an Act entitled: "An Act to provide relief in cases of contracts connected with the prosecution of the war." (Approved March 2, 1919.) Under this Act the Secretary of War is authorized "to adjust, pay and discharge any agreement, upon a fair and equitable basis, entered into during the present emergency and prior to November 12, 1918, by any officer "or agent acting under his authority" for the acquisition of lands, or for the production, manufacture or sale of equipment, material or supplies, or for services, or for other purposes connected with the prosecution of the war," when such agreement has been performed in whole or in part or where "expenditures have been made on the faith of the same."

The award under this act is to be made by the Secretary of War or in the event of the refusal of the Secretary of War to make the award asked for, by the Court of Claims. The award, in no case, shall "include prospective or possible profits." It is important also to observe that in order

to take advantage of the provisions of this Act claims must be presented before June 30th, 1919, which is a fixed date of limitations beyond which no claim of this kind can be presented for allowance.

It is important also to observe that the Secretary of the Interior is given the same authority to adjust and pay the "net losses suffered by any person or corporation by producing or preparing to produce either manganese, chrome pyrites or tungsten in compliance with the request of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board or the Emergency Fleet Corporation." The same provisions in respect to future profits exists in this case as in the case of claims presented to the Secretary of War. But the period of limitations in this case is "three months from and after the approval of the Act," which would be June 2, 1919.

This Act adds nothing to the law so far as providing for the payment of claims for work done or properly delivered, since it has always been a well settled rule that compensation in such cases is recoverable against the government on an implied assumpsit or on a *quantum meruit.* (Clark v. United States, 95 U. S. 539; Wilson v. United States, 23 Court of Claims Rep. 77.).

NOTES OF IMPORTANT DECISIONS.

LIABILITY OF PRINCIPAL FOR DECEIT BECAUSE OF THE FALSE REPRESENTATIONS OF HIS AGENT.—The rule as to the liability of a principal for the false representations of his agent is more difficult in its application than in its definition. It is well settled that a principal is liable for his agent's fraud if committed within the "course of employment," but what acts of an agent, amounting to a misrepresentation, may be said to be within the scope of his employment is an altogether different question. And the problem is made more difficult when the representation is not made in any direct business transaction with the plaintiff. This latter situation confronted the New York Court of Appeals in the recent case of Deyo v. Hudson, 122 N. E. 635.

The facts present a very strange case. The plaintiff was the senior member of a prominent law firm of Binghampton, N. Y. His junior partner, Carver, had become addicted to gambling in stock operations through the defendant as his broker. Defendant had his principal office in New York City and maintained a branch office at Binghampton under the management of one Mitchell. Plaintiff, having discovered that Carver had lost a large sum of money belonging to estates of their clients in buying "futures" through defendant's office at Binghampton, informed Mitchell of the fact that Carver had lost not only all his own fortune, but large sums belonging to their clients in his dealing with defendant and that he had intended to dismiss him from the firm but for the sake of Carver's reputation and family had decided to keep him in the firm and asked Mitchell not to open any future account with Carver without notifying the plaintiff. Mitchell very promptly agreed to do so, saying that it was the practice of the firm not to have dealings with persons acting in a trust capacity who were known to have no capital of their own. A few days before Mitchell made this promise to plaintiff, he had reopened the account of Carver and subsequently wrote his principal, the defendant, to keep the matter quiet, because Carver's partner was a "church man who didn't believe in gambling" and that any notoriety would probably lose them a good customer. Carver later lost over fifty thousand dollars of the money of his firm's clients and plaintiff brings this action for deceit against the plaintiff for the false representations of his agent, Mitchell, in stating that Carver had no account with them and in failing to notify him of Carver's subsequent speculations. It was alleged that over $67,000 of the funds belonging to client's had been embezzled by Carver and placed with defendant in speculative enterprises and that defendants had received about ten thousand dollars in commissions, on all the transactions. The trial court non-suited the plaintiff. The Appellate Division unanimously reversed the trial court, holding that the principal was liable. The Court of Appeals then reversed the Appellate Division on the ground that the principal had not authorized his agent to make any promises to relatives or business associates of their

customers to keep them informed of the speculation of such customer, and was therefore not responsible for any false statement in respect to the fact of such speculations. On this point the court said:

"Deyo was chargeable with notice of the nature and extent of Mitchell's powers. He knew that Mitchell had no interest in the reputation of the law firm. He was bound to know the rule that requires one in dealing with an agent to ascertain the limits of his authority. Defendants had no knowledge that such representations had been made. They were not made in defendant's name. Plaintiffs, having relied upon them without inquiry, may not transfer their loss to defendants without showing that defendants have assumed responsibility therefor."

Plaintiff further contended that the receipt and retention of the proceeds of his agent's fraud amounted to a ratification of the agent's conduct, which made the principal liable. To this the court answered:

"The rule which makes the receipt and retention of the fruits of an agent's fraud involve an innocent principal in liability on account of it (Krumm v. Beach, 96 N. Y. 398) is not unqualified. It has been said that such a ruling applied to collateral *contracts* would be subversive of well settled legal principles and would open the door to illimitable frauds by brokers, factors, attorneys and others clothed with limited powers and occupying strictly fiduciary relations (Smith v. Tracy, 36 N. Y. 79, 85; Baldwin v. Burrows, 47 N. Y. 199). A principal, in ignorance of the agent's fraud, retains what appears to be the legitimate proceeds of a transaction. That is not enough to bind him as by a ratification. If a principal authorizes his agent to make a sale, and the agent, wholly on his own responsibility, aids a buyer in embezzling the purchase money or in swindling someone out of it, the mere receipt and retention of the money by the principal in ignorance of such wrongful acts may not bind him to repay the proceeds of the theft (Wheeler v. Northwestern Sleigh Co., 39 Fed. Rep. 347, 351; Foote v. Cotting, 195 Mass. 55, 61; 15 L. R. A. (N .S.) 693). We would be carrying remedial liability beyond the logic of any reported case if we charged the defendants with responsibility for Mitchell's false promise The peculiar doctrines of agency are not to be extended beyond the limitations of common sense."

It seems to us that the decision of the Court of Appeals is without doubt sound in principle, in view of the theory upon which plaintiff sought to recover. It is well known that courts will often relieve against an agent's fraud where a rescission is sought, or a return of the ill-gotten gains, the result of agent's fraud, but will not hold a principal liable for damages for his agent's fraud in an action for deceit. In fact, it is the rule in many states that a principal is never liable in an action for deceit unless he directly co-operated in the fraud of the agent. Decker v. Fredericks, 47 N. J. L. 469; Freyer v. McCord, 165 Pa. 539; 30 Atl. 539; Mayo v. Wahlgreen, 9 Colo. App. 506, 50 Pac. 40.

It occurs to us that a proper proceeding would be one for the recovery of trust funds on the theory that the notice given to defendant's agent of the source of the moneys with which Carver was speculating was notice to the principal of the facts that such funds were impressed with a trust. The theory of the presumption of imputed knowledge is established by a multitude of decisions. "Notice to and knowledge of the agent" says the court in Chicago, etc., R. R. Co. v. Billsworth, 83 Fed. 437, "acquired while he is discharging the duties of his agency are notice to and knowledge of his principal." The principal by appointing an agent to transact his business cannot escape responsibility for facts that would have come to his knowledge if he had transacted the business himself. Therefore, defendant was presumed to know that the moneys invested by Carver were trust funds and therefore liable for their wrongful misappropriation.

Or, on still another theory, defendant was at least liable to disgorge the commissions received on transactions which were the result of his agent's fraud. On this point it is well for attorneys to study carefully the much debated decision of the House of Lords in Western Bank v. Addie, L. R. 1 H. L. Sc. 145, where a bank was sought to be made liable in an *action for deceit* for false representations made by directors with respect to the value of the stock of the bank. In this case the court said:

"The distinction to be drawn from the authorities, and which is sanctioned by sound principles, appears to be this: Where a person has been drawn into a contract to purchase shares belonging to a company, by fraudulent misrepresentations of the directors, and the directors, in the name of the company, seek to enforce that contract, or the person who has been deceived institutes a suit against the company to rescind the contract on the ground of fraud, the misrepresentations are imputable to the company, and the purchaser cannot be held to this contract, because a company cannot retain any benefit which they have obtained through the fraud of their agents. But if the person who has been induced to purchase shares by the fraud of the directors, instead of seeking to set aside the contract, prefers to bring an action for damages for the deceit, such an action cannot be maintained against the company, but only against the directors personally."

IS A REFERENDUM ON A FEDERAL AMENDMENT CONSTITUTIONAL?

Replying to the article by Mr. Wayne B. Wheeler, on the question, "Is a Referendum on a Federal Amendment Constitutional?" the argument in the negative is based on the literal construction of the Constitution of the United States, which has often been condemned by the United States Supreme Court. It was, for example, argued in McCulloch v. Maryland,[1] that the Constitution gave to Congress no express power to establish a bank and that the grant of power to Congress must be literally construed. But the Court, following the argument of Daniel Webster, held that if the end be legitimate and within the scope of the Constitution, all means which are appropriate and plainly adapted to this end and which are not prohibited are lawful. This principle of construction has been followed ever since. It is an application of the scriptural rule—"The letter killeth, but the spirit giveth life," and of the old legal maxim, *"Qui haeret in litera, haeret in cortice."* He who sticks to the letter sticks in the bark, and never gets to the heart of the tree.

For example, when the Constitution was adopted the electric telegraph was unknown. But it is well settled that the power given to Congress "to establish post offices and post roads" empowered Congress to avail of the newly invented telegraph, and to authorize the placing of telegraph poles and wires on highways and railroads which are declared to be post roads. The most recent of these cases is the Town of Essex v. New England Tel. Co.[2]

So it is well settled that the language, both of Constitutions and statutes, is to be adapted to changing conditions as they arise, and is not to be limited to literal compliance with conditions existing at the time of the adoption of the Constitution or statute. The United States may lawfully build steam frigates, submarines and aeroplanes, though such things were unknown in 1787.

In the Mayor v. Harlem Bridge Co.,[3] the New York Court of Appeals held that a statute requiring a railroad company to "keep the surface of the street inside the rails and for one foot outside thereof in good and proper order and repair," should be construed with reference to improvements in paving introduced after the passage of the Act. Many authorities are cited. It was therefore held that the company could lawfully be required to pave with a style of paving introduced by the city after the enactment of the statute.

To apply these decisions to the construction of Article V of the Federal Constitution. It is true that an amendment must be ratified by the state legislatures. But it is equally true that the Constitution of the United States does not define the word Legislature. Each state must do that for itself. Each state, moreover, is free to regulate the action of its own legislature. When, therefore, the people of a state determine that any action of the legislature may be rescinded by a popular vote on a referendum, this requirement becomes a part of the legislative procedure, just as much as the requirement of a concurrent vote of two houses. No one would pretend that ratification by one house of a bicameral legislature would suffice. It is equally competent for the people of a state to provide the referendum, which, when invoked, becomes an essential part of legislative action. Without that sanction the vote in the legislature is ineffective.

Abuse from the attorney for the Anti-Saloon League has no terrors for the bar of America. It reminds us of the advice given by Ketchum and Cheatham to the young attorney—If you have a bad case, abuse your adversary. He calls the temperate men who are trying to secure for their fellow-citizens the God-given freedom of choice—Bolshevists. What is Bolshe-

(1) 4 Wheaton 316.
(2) 239 U. S. 313; S. C. 36 S. C. R. 102.
(3) 186 N. Y. 304.

vism? Trotzky taught that when he was in this country. The proletariat are the natural enemies of the bourgeoisie, he said, and should take their property whenever they can. When he got back to Russia, he put this in practice. The prohibitionists for years have been abusing the wine growers of Missouri, Ohio, California and New York. They have been accused of making a poisonous drug. The government has encouraged the making of wine, has given certificates of excellence, and derived a large revenue from it. Many millions are invested in it. The prohibitionists are doing their best to destroy this property without compensation. That is Bolshevism, pure and simple.

EVERETT P. WHEELER.

New York, N. Y.

NATURAL JUSTICE

This expression occurs in the recent judgment given Justice Astbury in Brown v. British Abrasive Co., Ltd.,[1] in which he granted injunction to protect a shareholder in the defendant company against the actings of the majority of the members. They proposed to alter the articles of the company by the addition of a new article to the effect that a shareholder should be bound on receiving a written request from the holders of nine-tenths of the issued shares to transfer his shares to the nominee of such shareholders in return for the ascertained value or par-value of his shares, whichever should be greater. The learned judge decided that the proposed article was one which the majority were not entitled to press on the minority and he granted the injunction with costs. Apart altogether from the feature of the case which we propose to discuss, and the question whether or not the decision will be affirmed on appeal, the line taken by his lordship was one which will meet with approval in many quarters as being a recognition of the rights of minorities and an instance of the inherent power of the courts to go behind formal rules for the purpose of redressing actions, that are unjust and oppressive.

In the course of his opinion, Mr. Justice Astbury remarked that to his mind, the point was, "whether the proposed alteration was contrary to natural justice." A tolerably wide acquaintance with the case law of recent years has left us with the decided impression that an appeal, such as this, to natural justice has been rarely if ever made. As we shall show, it was not always so, but the immense increase in statute law and the emphasis that has for long been laid on freedom of contract, has tended to obscure the once prominent theory of the law of nature. We would not be far wrong in saying that by not a few judges, it was and is distrusted. "A man has no more a natural right to land, than I have a natural right to a box at the opera," was a dictum of Lord Bramwell, which with characteristic pith and conciseness express the thought of many.

And yet the theory of the law of nature is exceedingly fascinating. It dates from the speculations of the ideal philosophers of Greece who, in contrast to the shifting rules of the positive laws which, as is the case today, were alterable at the pleasure of kings, senates, municipalities and judges, spoke of the unwritten law ingrained in the heart of man, of a common law recurring among different tribes of a law of nature which reasonable creatures were everywhere bound to recognize. The stoic philosophers carried on the development of the principle; later under the influence of medieval Christianity it obtained a religious setting; and again with the revival of learning and the growth of rationalism, the philosophers of the sixteenth, seventeenth and eighteenth centuries strove to elaborate the theory of a law of reason which ought to conform to the eternal law of nature.

(1) 35 T. L. R. 268.

What has wrought the great change between then and now is the all pervading influence of the nineteenth century doctrine of evolution, and historical rather than philosophical study of the law became the fashion. It came to be realized that what was termed the law of nature was itself not constant, but was subject to changes from time to time. The idea of a law of nature suggests for instance that what has been termed the sacred rights of property should fall under its operation and should in their first principles at least be for all time unchangeable. The historical jurist has shown, however, that the origins of property have been communistic; in its further history it has been treated more and more from the private point of view; today organized society is claiming a larger and increasing share in its distribution and use. Can it be maintained that say the nationalization of land would be against the laws of nature. We fear that any appeal on this question to the "eternal tenets of the law of reason" would only meet with derision. Many other institutions and beliefs once considered as immutably based on the law of nature may be similarly shown to be affected by the progress of society.

In this state of matters the modern theory of the law of nature is that the conceptions of justice which were formerly thought to be natural are really themselves historical; the ethical standard of what is right and wrong, just or unjust changes from time to time, and the contents of the law of nature vary with the ages. A certain school of jurists in fact teaches that each age has its own law of nature existing by the side of its positive laws, and the function of this law of nature is to act like a conscience as it were toward the positive law so that the rules of the positive law are thus being continuously called on to justify their existence by reference to the ideal standards set up by the philosophical doctrines of the time. A very clear illustration of the operation of this theory is the housing question today; the law is being amended in order to conform to what has come to be recognized as a decent standard of living.

Is then the original conception of the law of nature dead? We should be slow to think so, for whenever the question occurs regarding any matter, "is it fair;" "is it equitable, or right, or just," we cannot but think that this is an appeal to something deeper in nature than the shifting standards of each age. To take the very case referred to at the commencement of this article, what could more plausibly be argued in this age of democratic ideas of government by the majority, than that an individual shareholder should subordinate his interests to the overwhelming majority of nine-tenths of the company, yet as we have seen Mr. Justice Astbury by dwelling on such, shall we say, primitive ideas as fairness, justice, undue oppression, came to decide against the majority. He found it difficult to follow how it could be just and equitable that a majority, who failed to purchase other shares by agreement, should be entitled to exercise their votes so as to take power to do it compulsorily.

DONALD MACKAY.

Glasgow, Scotland.

FALSE IMPRISONMENT—JUSTICE OF THE PEACE.

SHAEFER v. SMITH.

Supreme Court of New Jersey. Feb. 25, 1919.

106 Atl. 21.

A magistrate who, upon a mere oral oath to the facts, but without a sworn and signed complaint, issues a warrant and causes the arrest of and binds over a citizen to keep the peace, may be held liable for false imprisonment.

SWAYZE, J. This is an action for false imprisonment. The defendant is recorder of North Arlington and issued a warrant under which the plaintiff was arrested and bound to keep the peace. No formal complaint was made to the magistrate. One Stetz complained verbally on behalf of his wife. The justice wrote down, apparently in the warrant, what

Stetz told him and asked him if he would swear that was the truth; to which Stetz replied, "Yes, I do." Thereupon without Stetz signing the statement or the magistrate drawing or signing any jurat, the defendant handed the warrant to the officer to serve.

The learned trial judge charged the jury that no written complaint was necessary. This was erroneous. The lack of a complaint was recognized by the court as an exception to the rule of the magistrate's immunity in Grove v. Van Duyn, 44 N. J. Law, 654, 660, 43 Am. Rep. 412. The necessity of a complaint is most clear in a case of binding one over to keep the peace. In the time of Blackstone, and probably at the present time, the proceeding was called "swearing the peace," and the complaint was called "articles of the peace." 4 Bl. Comm. 255. The necessity of a complaint was recognized by the Supreme Court of New York in Bradstreet v. Ferguson, 23 Wend. (N. Y.) 638. The court in that case held that the recital in the warrant that there had been a sworn complaint was sufficient presumptive evidence that such was the fact, in the absence of proof to the contrary. We, perhaps, could follow that ruling in the present case, but for the clear proof to the contrary by the magistrate himself. For this error, the rule must be made absolute.

NOTE—*Liability of Judge Acting in Excess of Jurisdiction.*—In Broom v. Douglass, 57 So. 860, 44 L. R. A. (N. S.) 164, it was said: "There are numerous cases which support the view that a judge of limited and inferior jurisdiction is liable in every case where he acts merely in excess of his actual jurisdiction." Then the court instances several cases in support of this statement. Then the court goes on to observe that "these cases, however, proceed in general on the narrow view that a void act necessarily imposes liability, which assumes, in accordance with a once most favored theory, that there is a radical distinction between the acts of judges of high and judges of low degree in excess of their jurisdiction, to the extent that the one class should never be held liable, while the other should always be. That there is in reason, justice or policy in any such radical distinction has long been doubted, and is increasingly denied by the best considered modern cases and by standard text writers." It is the view of this case, that there should be good faith and no malice or corruption.

In Robertson v. Parker, 99 Wis. 652, 75 N. W. 889, 67 Am. St. R. 889, it was held that where a judge of an inferior court has jurisdiction, but exceeds it, there is no personal liability.

In Grove v. Van Duyn, 44 N. J. L. 654, 42 Am. Rep. 648, it is said that "the doctrine that an officer having general powers of judicature must, at his peril, pass upon the question, which is often one difficult of solution, whether the facts before him place the given case under his cognizance is as unreasonable as it is impolitic."

In Calhoun v. Little, 106 Ga. 336, 32 S. E. 86, 43 L. R. A. 630, 71 Am. St. Rep. 254, the question was whether a judge of an inferior court was liable in a civil action for inflicting punishment under a void ordinance, and it was held that all judicial officers stand on the same footing and the judge having jurisdiction as to an alleged offense was not liable for erroneously ruling an ordinance was valid. See also Henke v. McChord, 55 Iowa 378, 7 N. W. 623.

In Thompson v. Jackson, 93 Iowa 376, 61 N. W. 1004, 27 L. R. A. 92, it was held that justices of the peace are like judges of superior courts protected from personal liability as to acts in excess of jurisdiction, if they act in good faith and in the belief that they have jurisdiction. The court said: "The current of legal thought is that the distinction (between judges of superior and inferior courts) is unreasonable, unjust, illogical and ought not to obtain."

In Robertson v. Hale, 68 N. H. 538, 44 Atl. 695: "It is a general rule that courts and judges are not liable in civil actions for their judicial acts within the scope of their jurisdiction, and this protection extends to magistrates exercising an inferior and limited jurisdiction as justices of the peace. If they act in oppressive abuse of legal authority they make themselves liable to impeachment or indictment for official misconduct."

And it has been held that if a justice of the peace acts corruptly where he has jurisdiction, his acts entail no civil responsibility. Early v. Fitzpatrick, 161 Ala. 171, 49 So. 686, 135 Am. St. Rep. 123; Dixon v. Cooper, 109 Ky. 29, 58 S. W. 437.

In Curnow v. Kessler, 110 Mich. 10, 67 N. W. 982, it was said: "The justice (of the peace) having obtained jurisdiction of the subject-matter, the rule is well settled that no action can be sustained against him. . . . It is indispensable to the administration of justice that a judge or other judicial officer who acts within the scope of his jurisdiction may act freely, without any fear of being held responsible in a civil action, or having his motives brought in question by one injuriously affected by his judgments. This immunity is uniformly held not to be affected by the motives with which it is alleged that the judicial officer has performed his duty."

But it has been ruled that, if a justice corruptly refused to allow an appeal or oppressively prevented one from obtaining sureties to prosecute his appeal so as to compel payment of a judgment with costs, in a criminal case, he became liable for a tort. Raymond v. Lowe, 87 Me. 329, 32 Atl. 964. This, however, was said *arguendo*.

And also it has been held that where a justice of the peace issued a subpoena when there was no action pending and on failure of plaintiff to appear issued a warrant for his arrest and imposed a fine for contempt there was held to present a question for the jury whether the justice acted corruptly or with malice. Chambers v. Oehler, 107 Iowa 155, 77 N. W. 853.

Where there is merely a ministerial duty to be performed and injury arises, the cases seem to rule in favor of liability of an inferior judicial officer, and this irrespective of the motive for failure to perform it. See Lawson v. Kelly, 64

Minn. 51, 66 N. W. 130 (neglect to enter judgment on docket within the time required by law); Bannister v. Wakeman, 64 Vt. 203, 23 Atl. 585, 15 L. R. A. 201 (issuing mittimus after appeal granted).

It seems, therefore, to be that if there is utter lack of jurisdiction, corruption may be inquired into or in some cases, somewhat exceptional in character, but which presume they could not have been honestly decided or upon such carelessness as presumed wrong motive, an officer may be held liable in damages. But if there is any claim, at all, though colorable only, for jurisdiction, motives cannot be inquired into. C.

ITEMS OF PROFESSIONAL INTEREST.

REVISED TEXT OF COVENANT OF THE LEAGUE OF NATIONS.

PREAMBLE.

In order to promote international co-operation and to achieve international peace and security, by the acceptance of obligations not to resort to war; by the prescription of open, just and honorable relations between nations; by the firm establishment of the understandings of international law as to actual rule of conduct among governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, the high contracting parties agree to this covenant of the League of Nations.

(In the original preamble the last sentence read, "Adopt this constitution" instead of "agree to this covenant.")

ARTICLE I.

The original members of the League of Nations shall be those of the signatories which are named in the annex to this covenant and also such of those other states named in the annex as shall accede without reservation to this covenant. Such accessions shall be effected by a declaration deposited with the secretariat within two months of the coming into force of the covenant. Notice thereof shall be sent to all other members of the league.

Any fully self-governing state, dominion or colony not named in the annex, may become a member of the league, if its admission is agreed to by two-thirds of the assembly, provided that it shall give effective guaranties of its sincere intention to observe its international obligations and shall accept such regulations as may be prescribed by the league in regard to its military and naval forces and armanent.

Any member of the league may, after two years' notice of its intention to do so, withdraw from the league, provided that all its international obligations and all its obligations under this covenant shall have been fulfilled at the time of its withdrawal.

(This article is new, embodying with alterations and additions the old Article VII. It provides more specifically the method of admitting new members and adds the entirely new paragraph providing for withdrawal from the league. No mention of withdrawal was made in the original document.)

ARTICLE II.

The action of the league under the covenant shall be effected through the instrumentality of an assembly and of a council, with permanent secretariat.

(Originally, this was a part of Article I. It gives the name Assembly to the gathering of representatives of the members of the league, formerly referred to merely as "The body of delegates.")

ARTICLE III.

The assembly shall consist of representatives of the members of the league.

The assembly shall meet at stated intervals and from time to time, as occasion may require, at the seat of the league, or at such other place as it may be decided upon.

The assembly may deal at its meetings with any matter within the sphere of action of the league or affecting the peace of the world.

At meetings of the assembly, each member of the league shall have one vote, and may have not more than three representatives.

(This embodies parts of the original Article I, II and III, with only minor changes. It refers to "members of the league" where the term "high contracting parties" originally was used, and this change is followed throughout the revised draft.)

ARTICLE IV.

The council shall consist of representatives of the United States of America, of the British Empire, of France, of Italy and of Japan, together with representatives of four other members of the league. These four members of the league shall be selected by the assembly from time to time in its discretion. Until the appointment of the representatives of the four members of the league first selected by the assembly, representatives of (blank) shall be members of the council.

With the approval of the majority of the assembly, the council may name additional members of the league whose representatives shall always be members of the council; the council, with like approval, may increase the number of members of the league to be selected by the assembly for representation on the council.

The council shall meet from time to time, as occasion may require, and at least once a year, at the seat of the league, or at such other place as may be decided upon.

The council may deal at its meetings with any matter within the sphere of action of the league or affecting the peace of the world.

Any member of the league not represented on the council shall be invited to send a representative to sit as a member at any meeting of the council during the consideration of matters specially affecting the interests of that member of the league.

At meetings of the council, each member of the league represented on the council shall

have one vote, and may have not more than one representative.

(This embodies that part of the original Article III designating the original members of the council. The paragraph providing for increase in membership of the council is new.)

ARTICLE V.

Except where otherwise expressly provided in this covenant, decisions at any meeting of the assembly or of the council shall require the agreement of all the members of the league represented at the meeting.

All matters of procedure at meetings of the assembly or of the council, the appointment of committees to investigate particular matters, shall be regulated by the assembly or by the council, and may be decided by a majority of the members of the league represented at the meeting.

The first meeting of the assembly, and the first meeting at the council shall be summoned by the president of the United States of America.

(The first paragraph requiring unanimous agreement in both assembly and council, except where otherwise provided, is new. The other two paragraphs originally were included in Article IV.)

ARTICLE VI.

The permanent secretariat shall be established at the seat of the league. The secretariat shall comprise a secretary-general and such secretaries and staff as may be required.

The first secretary-general shall be the person named in the annex thereafter the secretary-general shall be appointed by the council with the approval of the majority of the assembly.

The secretaries and the staff of the secretariat shall be appointed by the secretary-general with the approval of the council.

The secretary-general shall act in that capacity at all meetings of the assembly and of the council.

The expenses of the secretariat shall be borne by the members of the league in accordance with the apportionment of the expenses of the International Bureau of Universal Postal Union.

(This replaces the original Article V. In the original the appointment of the first secretary-general was left to the council and approval of the majority of the assembly was not required for subsequent appointments.)

ARTICLE VII.

The seat of the league is established at Geneva.

The council may at any time decide that the seats of the league shall be established elsewhere.

All positions under or in connection with the league, including the secretariat, shall be open equally to men and women.

Representatives of the members of the league and officials of the league, when engaged in the business of the league, shall enjoy diplomatic privileges and immunities.

The buildings and other property occupied by the league or its officials or by representatives attending its meetings, shall be inviolable.

(Embodying parts of the old Articles V and VI, this article names Geneva instead of leaving the seat of the league to be chosen later, and adds the provision for changing the seat in the future. The paragraph opening positions to women equally with men is new.)

ARTICLE VIII.

The members of the league recognize that the maintenance of a peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The council, taking account of the geographical situation and circumstances of each state shall formulate plans for such reduction for the consideration and action of the several governments.

Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several governments, limits of armaments therein fixed shall not be exceeded without the concurrence of the council.

The members of the league agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had for the necessities of those members of the league which are not able to manufacture the munitions and implements of war necessary for their safety.

The members of the league undertake to interchange, full and frank information as to the scale of their armaments, their military and naval programs and the condition of such of their industries as are adaptable to warlike purposes.

(This covers the ground of the original Article VIII, but is rewritten to make it clearer that armament reduction plans must be adopted by the nations affected before they become effective.)

ARTICLE IX.

A permanent commission shall be constituted to advise the council on the execution of the provisions of Articles I and VIII, and on military and naval questions generally.

(Unchanged, except for the insertion of the words "Article I.")

ARTICLE X.

The members of the league undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the league. In case of any such aggression, or in case of any threat or danger of such aggression, the council shall advise upon the means by which this obligation shall be fulfilled.

(Virtually unchanged.)

ARTICLE XI.

Any war or threat of war, whether immediately affecting any of the members of the league or not, is hereby declared a matter of concern to the whole league, and the league shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any emergency should arise,

the secretary-general shall, on the request of any member of the league, forthwith summon a meeting of the council.

It is also declared to be the fundamental right of each member of the league to bring to the attention of the assembly or of the council any circumstance whatever affecting international relations which threatens to disturb either the peace or the good understanding between nations upon which peace depends.

(In the original it was provided that the "high contracting parties reserve the right to take any action," where the revised draft reads, "the league shall take any action.")

ARTICLE XII.

The members of the league agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the council.

In any case, under this article, the award of the arbitrators shall be made within a reasonable time, and the report of the council shall be made within six months after the submission of the dispute.

(Virtually unchanged, except some provisions of the original are eliminated for inclusion in other articles.)

ARTICLE XIII.

The members of the league agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration, and which cannot satisfactorily be settled by diplomacy, they will submit the whole subject-matter to arbitration. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact, which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration. For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

The members of the league agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a member of the league which complies therewith. In the event of any failure to carry out such an award the council shall propose what steps should be taken to give effect thereto.

(Only minor changes in language.)

ARTICLE XIV.

The council shall formulate and submit to the members of the league for adoption plans for the establishment of a permanent court of international justice. The court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The court may also give an advisory opinion upon any dispute or question referred to it by the council or by the assembly.

(Unchanged, except for the addition of the last sentence.)

ARTICLE XV.

If there should arise between members of the league any dispute likely to lead to a rupture which is not submitted to arbitration as above, the members of the league agree that they will submit the matter to the council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to secretary-general, who will make all necessary arrangements for a full investigation and consideration thereof. For this purpose the parties to the dispute will communicate to the secretary-general, as promptly as possible, statements of their case, all the relevant facts and papers, and the council may forthwith direct the publication thereof.

The council shall endeavor to effect a settlement of any dispute, and if such efforts are successful, a statement shall be made public, giving such facts and explanations regarding the dispute and terms of settlement thereof as the council may deem appropriate. If the dispute is not thus settled, the council, either unanimously or by a majority vote, shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any member of the league represented on the council may make public a statement of the facts of the dispute and of its conclusion regarding the same.

If a report by the council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute. the members of the league agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the members of the league reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them and is found by the council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the council shall so report, and shall make no recommendation as to its settlement.

The council may in any case under this article, refer the dispute to the assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the council.

In any case referred to the assembly, all the provisions of this article and of Article XII relating to the action and powers of the council shall apply to the action and powers of the

assembly, provided that a report made by the assembly, if concurred in by the representatives of those members of the league represented on the council and of a majority of the other members of the league, exclusive in each case of the representatives of the parties to the dispute, shall have the same force as a report by the council concurred in by all the members thereof other than the representatives of one or more of the parties to the dispute.

(The paragraph specifically excluding matters of "domestic jurisdiction" from action by the council is new. In the last sentence the words "if concurred in by the representatives of those members of the league represented on the council," have been added.)

ARTICLE XVI.

Should any member of the League resort to war in disregard of its covenants under Articles XII, XIII or XV, it shall ipso facto be deemed to have committed an act of war against all other members of the league, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking state, and the prevention of all financial, commercial or personal intercourse between nationals of the covenant-breaking state and the nationals of any other state, whether a member of the league or not.

It shall be the duty of the council in such case to recommend to the several governments concerned what effective military or naval forces the members of the league shall severally contribute to the armaments of forces to be used to protect the covenants of this league.

The members of the league agree, further, that they will mutually support one another in the financial and economic measures which are taken under this article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking state, and that they will take the necessary steps to afford passage through their territory to the forces of any of the members of the league which are co-operating to protect the covenants of the league.

Any member of the league which has violated any covenant of the league may be declared to be no longer a member of the league by a vote of the council, concurred in by the representatives of all the other members of the league represented thereon.

(Unchanged, except for the addition of the last sentence.)

ARTICLE XVII.

In the event of a dispute between a member of the league and a state which is not a member of the league, or between states not members of the league, the state or states not members of the league shall be invited to accept the obligations of membership in the league for the purposes of such dispute, upon such conditions as the council may deem just. If such invitation is accepted the provisions of Articles XII to XVI, inclusive, shall be applied, with such modifications as may be deemed necessary by the council.

Upon such invitation being given the council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a state so divided shall refuse to accept the obligations of membership in the league for the purposes of such dispute, and shall resort to war against a member of the league, the provisions of Article XVI shall be applicable as against the state taking such action.

If both parties to the dispute, when so invited, refuse to accept the obligations of membership in the league for the purpose of such dispute, the council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

(Virtually unchanged.)

ARTICLE XVIII.

Every covenant or international agreement entered into henceforward by any member of league, shall be forthwith registered with the secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

Same as original Article XXIII.

ARTICLE XIX.

The assembly may from time to time advise the reconsideration by members of the league of treaties which have become inapplicable, and the consideration of international conditions whose continuance might endanger the peace of the world.

(Virtually the same as original Article XXIV.)

ARTICLE XX.

The members of the league severally agree that this covenant is accepted as abrogating all obligations or understandings inter se which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any member of the league shall, before becoming a member of the league, have undertaken any obligations inconsistent with the terms of this covenant, it shall be the duty of such member to take immediate steps to prorure its release from such obligations.

(Virtually the same as original Article XXV.)

ARTICLE XXI.

Nothing in this covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings like the Monroe Doctrine for securing the maintenance of peace.

(Entirely new.)

ARTICLE XXII.

To those colonies and territories which, as a consequence of the late war, have ceased to be under the sovereignty of the states which formerly governed them, and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the

principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this covenant.

The best method of giving practicable effect to this principle is that the tutelage of such peoples be entrusted to advanced nations who, by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as mandatories on behalf of the league.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic condition and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized, subject to the rendering of administrative advice and assistance by a mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the mandatory must be responsible for the administration of the territory under conditions which shall guarantee freedom of conscience or religion, subject only to the maintenance of public order and morals; the prohibition of abuses, such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases, and of military training of the nations for other than police purposes and the defense of territory, and will also secure equal opportunities for the trade and commerce of other members of the league.

There are territories, such as Southwest Africa, and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size or their remoteness from the centers of civilization, or their geographic continuity to the territory of the mandatory and other circumstances, can best be administered under the laws of the mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population. In every case of mandate, the mandatory shall render to the council an annual report in reference to the territory committed to its charge.

The degree of authority, control or administration to be exercised by the mandatory shall, if not previously agreed upon by the members of the league, be explicitly defined in each case by the council.

A permanent commission shall be constituted to receive and examine the annual reports of the mandatories and to advise the council on all matters relating to the observance of the mandates.

This is the original Article XIX, virtually, except for the insertion of the words "and who are willing to accept," in describing nations to be given mandatories.)

ARTICLE XXIII.

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the members of the league (A) will endeavor to secure and maintain fair and humane conditions of labor for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations; (B) undertake to secure just treatment of the native inhabitants of territories under their control; (C) will entrust the league with the general supervisions over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs; (D) will entrust the league with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest; (E) will make provision to secure and maintain freedom of communication and of transit and equitable treatment for the commerce of all members of the league. In this connection the special necessities of the regions devastated during the war of 1914-1918 shall be in mind; (F) will endeavor to take steps in matters of international concern for the prevention and control of disease.

(This replaces the original Article XX and embodies parts of the original Article XVIII and XXI. It eliminates a specific provision formerly made for a Bureau of Labor and adds the clauses B and C.)

ARTICLE XXIV.

There shall be placed under the direction of the league all international bureaus already established by general treaties if the parties to such treaties consent. All such international bureaus and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the league.

In all matters of international interest which are regulated by general conventions, but which are not placed under the control of international bureaus or commissions, the secretariat of the league shall, subject to the consent of the council, and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

The council may include as part of the expenses of the secretariat the expenses of any bureau or commission which is placed under the direction of the league.

(Same as Article 22 in the original, with the matter after the first two sentences added.)

ARTICLE XXV.

The members of the league agree to encourage and promote the establishment and cooperation of duly authorized voluntary national Red Cross organizations, having as purposes improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

(Entirely new.)

ARTICLE XXVI.

Amendments to this covenant will take effect when ratified by the members of the league, whose representatives compose the council and by a majority of the members of the league whose representatives compose the assembly.

No such amendment shall bind any member of the league which signifies its dissent therefrom, but in that case it shall cease to be a member of the league.

(Same as original, except that a majority of the league, instead of three-fourths, is required for ratification of amendments, with the last sentence added.)

ANNEX TO COVENANT.

1. Original members of the League of Nations, signatories of the treaty of peace:

United States of America, Belgium, Bolivia, Brazil, British Empire, Canada, Australia, South Africa, New Zealand, India, China, Cuba, Czecho-Slovakia, Ecuador, France, Greece, Guatemala, Haiti, Hedjaz, Honduras, Italy, Japan, Liberia, Nicaragua, Panama, Peru, Poland, Portugal, Roumania, Servia, Siam, Uruguay.

States invited to accede to the covenant: Argentine Republic, Chile, Colombia, Denmark, Netherlands, Norway, Paraguay, Persia, Salvador, Spain, Sweden, Switzerland, Venezuela.

2. First secretary general of the League of Nations (blank).

(The annex was not published with the original draft of the covenant.)

BAR ASSOCIATION MEETINGS FOR 1919—WHEN AND WHERE TO BE HELD.

American—New London, Conn., September 3, 4, 5.

Alabama—Selma, July 4, 5.

Arkansas—Little Rock, May 29, 30.

Hawaii—Honolulu, May 29.

Georgia—Tybee Island, May 30, 31.

Illinois—Decatur, May 28, 29.

Iowa—Davenport, June 26, 27.

Kentucky—Lexington, June 26, 27.

Maryland—Atlantic City, N. J., June 26, 27, 28.

Michigan—Ann Arbor, June 20, 21.

Minnesota—La Crosse, Wis., July 1, 2, 3.

New Jersey—Atlantic City, June 13, 14.

North Carolina—Greensboro, August 12, 13, 14.

Ohio—Cedar Point, July 8, 9, 10.

Pennsylvania—Bedford Springs, June 24, 25, 26.

South Carolina—Tybee Island, May 30, 31.

Wisconsin—La Crosse, July 1, 2, 3.

West Virginia—Fairmont, July 22, 23.

HUMOR OF THE LAW.

"You'll get run in," said the pedestrian to the cyclist, "if you ride without a light."

"You'll get run into," responded the rider as he knocked the other down.

"You'll get run in, too!" said the policeman as he stepped forward and seized the cyclist.

Just then another scorcher came along without a light, so the policeman was run into, too, and had to run in two.—*Tit-Bits.*

A group of workers were lunching in a sheltered nook on a wharf. One of them went across the street for a plug of tobacco, and during his absence another substituted for his tin of pale coffee and milk his own tin of milkless, black coffee.

When the first worker returned to his lunch he could hardly believe his eyes.

"Well," said he, "I have heard of clever thieves, but to swipe the milk out of a feller's coffee is about the limit!"—Tit-Bits.

"Squabbling and fighting—that's another frequent cause of divorce," said Judge Hilary M. Hawke of Denver, in an address on the divorce evil.

"I said to a young man in a recent divorce case:

"'Let me see—aren't you that hero who married a Red Cross nurse in a front line trench during a German mustard gas bombardment?'

"'Yes, your honor, I'm the man,' the applicant answered.

"'It must have been exciting, wasn't it?' said I.

"'Well, your honor,' said the man; it seemed so then—it wouldn't now.'"

Mr. Jones loved his better-half dearly, but was unfortunately more lavish in love than money.

Starting one day on a long business trip, he left Mrs. J. short of money, but promised to send a check, which, needless to say, did not arrive. When the rent became due his wife telegraphed:

"Stony broke. Landlord in the house. Wire me money."

Mr. J. answered:

"Am short myself. Will soon send check. A thousand kisses."

Exasperated, she wired back:

"Don't bother about money. Gave landlord one of the kisses. He was more than satisfied."—*Answers.*

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Bankruptcy**—Adjudication. — Adjudication in bankruptcy, while establishing as against the world, for the purpose of administering the debtor's property, his status as a bankrupt, is, like other adjudications in rem, not res judicata as to the facts or the subsidiary questions of law on which it is based, except as between the parties to the proceeding or privies thereto, and so not as to the facts found, that the debtor had been insolvent for a certain time, and while so insolvent had made certain preferences.—Gratiot County State Bank v. Johnson, U. S. S. C., 39 S. Ct. 263.

2.——Deposits.—Where bankrupts each day overdrew their bank account, which was secured by collateral, and each night made deposits to cover, the fact that money fraudulently obtained from complainants was from time to time included in such deposits held not to impress the surplus fund arising from the sale of the bank collateral after bankruptcy with a trust in favor of complainants.—Knauth v. Knight, U. S. C. C. A., 255 Fed. 677.

3.——Schedule.—Where plaintiff failed to schedule note in bankruptcy proceeding and inferentially concealed it from trustee, he could not, after having been adjudged a bankrupt, maintain suit on note and foreclose mortgage securing it, without showing that trustee had not elected to claim note, or refused to do so.—Perkins v. Alexander, Tex., 209 S. W. 789.

4. **Banks and Banking**—Fraud.—Buyer of bank stock held by the bank as treasury stock, upon misrepresentations by bank's agent as to condition of bank, may rescind purchase upon discovery of fraud.—Romunder v. Caskey, Ark., 209 S. W. 735.

5.——Payment.—That defendant bank after satisfying itself that check was genuine, and that there were sufficient funds to pay it, stamped it "Paid," and placed it upon spindle, held not to constitute "payment" which would deprive plaintiff depositor of the right to countermand the check.—Hunt v. Security State Bank, Ore., 179 Pac. 248.

6. **Bills and Notes**—Acceptance.—The acceptance of a bill of exchange is the act by which the drawee manifests his consent to comply with the request contained in the bill of exchange directed to him, and it contemplates an engagement or promise to pay.—Hunt v. Security State Bank, Ore., 179 Pac. 248.

7.——Accommodation Maker.—As between accommodation makers of a note, the presumption is that they are co-sureties, and as such liable to contribution to one of their number discharging the obligation.—Huffman v. Manley, W. Va., 98 S. E. 613.

8.——Interest.—Payment of interest in advance and notation thereof on a note would not of itself be evidence of an agreement extending time for payment.—Highland Inv. Co. v. Kansas City Computing Scales Co., Mo., 209 S. W. 895.

9. **Carriers of Goods**—Bill of Lading.—A shipper's negotiation of a bill of lading with attached drafts, by indorsement and delivery to a bank, vests in a bank title to goods and right of possession, and no attachable interest remained in shipper, and attaching dealer could not require bank to account for goods or any excess in value over face of original draft.—Farmers' & Merchants' Nat. Bank v. Sprout, Kan., 179 Pac. 301.

10.——Insurer.—When a common carrier receives goods for shipment, it insures their delivery in accordance with bill of lading, unless the loss is occasioned by act of God, or of a public enemy, or by reason, or on account of or vice of goods or animals, or on account of fault of consignee.—Mistrot-Calahan Co. v. Missouri, K. & T. Ry. Co. of Texas, Tex., 209 S. W. 775.

11. **Chattel Mortgages**—Crops.—A mortgagor of a crop to be grown, must have some interest in the land on which the crop is to be grown at the time of the execution of the mortgage.—Johnson v. Goosa Mfg. Co., Ala., 81 So. 141.

12.——Future Crops.—A chattel mortgage on future crops is enforceable in equity, when the crops come into the possession of the mortgagor, if their acquisition was contemplated when the mortgage was made.—Perkins v. Alexander, Tex., 209 S. W. 789.

13.——Installment Contract.—Where piano is sold under an installment contract secured by a mortgage, and the piano is taken back, and a new one substituted, the mortgage is rendered functus officio.—J. W. Jenkins Music Co. v. Wilson, Mo., 209 S. W. 987.

14. **Commerce**—Commercial Methods.—"Interstate commerce" is a practical conception, and what falls within it must be determined on consideration of established facts and known commercial methods.—Public Utilities Commission for State of Kansas v. Landon, U. S. S. C., 39 S. Ct. 268.

15.——Telegraph.—Transmsion of intelligence by wire is commerce.—Western Union Telegraph Co. v. Bowles, Va., 98 S. E. 645.

16. **Compromise and Settlement**—Repudiation.—On repudiating a settlement for fraud, it is not a necessary condition precedent that plaintiff shall return amount of payment made on a liquidated claim and justly due and owing simply because payment was made as part of transaction of settlement.—Helvetia Copper Co. v. Hart-Parr Co., Minn., 171 N. W. 272.

17.——Satisfaction.—Where there is a dispute in good faith as to amount due, a payment by debtor of amount admitted to be due in full settlement, if accepted by creditor, is a satisfaction of his claim.—Janci v. Cerny, Ill., 122 N. E. 507.

18. **Constitutional Law**—Bill Board.—A billboard company's contracts for maintaining advertisements on its boards, though made before passage of an ordinance placing restrictions on such boards, are subject thereto as against objection of its incidental effect on them.—St. Louis Poster Advertising Co. v. City of St. Louis, U. S. S. C., 39 S. Ct. 274.

19. **Contracts**—Breach of.—A court will not impose damages for breach of a contract, if the breach was occasioned by the law, as by the appointment of a receiver at suit of a third party, who took possession of the property which was the subject-matter of the contract and thereby prevented performance.—Moller v. Herring, U .S. C. C. A., 255 Fed. 670.

20.——Intention.—Subsequent acts and conduct of the contracting parties may be considered in arriving at their intention.—D'Yarmett v. School Dist. No. 27, Canadian County, Okla., 179 Pac. 20.

21.——Meaning of Words.—In determining the meaning of what the parties have said in a written contract or conveyance, the language used is to be taken in its ordinary signification, unless it has acquired a peculiar meaning or unless the context plainly shows that it is used in some peculiar sense, and, if when so read the meaning is plain, the instrument must be given effect accordingly.—Virginian Ry. Co. v. Avis, Va., 98 S. E. 638.

22.——Possible Performance.—If one makes contract which is in itself possible, he will be liable for a breach, notwithstanding it is beyond his power to perform, but where it is apparent that parties contracted on basis of continued existence of substance to which contract related, a condition is implied that if performance becomes impossible because that substance does not exist, this will excuse performance.—Virginia Iron, Coal & Coke Co. v. Graham, Va., 98 S. E. 659.

23.——Want of Consideration.—A mere promise by a carrier to pay for goods lost, for which it was not liable, not in the nature of a compromise, is not binding upon carrier, because without consideration.—Mistrot-Calahan Co. v. Missouri, K. & T. Ry. Co. of Texas, Tex., 209 S. W. 775.

24. **Corporations**—General Manager.—There is presumption that general manager of plaintiff corporation suing for balance of rent had authority to make contract reducing rent, which testimony tended to show he did make.—Sherman, Clay & Co. v Buffum & Pendleton, Ore., 179 Pac. 241.

25.——Rescission.—One who has been induced to purchase stock by fraud may sue seller in equity to rescind sale, or may sue at law for damages on account of the fraud.—Romunder v. Caskey, Ark., 209 S. W. 735.

26. **Covenants**—Intermediate Owner.—An intermediate owner of land has no right of action for the breach of the covenants of a warranty deed, until he has been made to respond to the claims of his covenants.—McPike v. Smith, Tex., 209 S. W. 815.

27. **Criminal Law**—Abstract Questions.—The trial court is not required to instruct on abstract questions of law, as that of accomplice testimony, on which there is no evidence in the case.—State v. Pfeiffer, Mo., 209 S. W. 925.

28.——Arrest of Judgment.—Where Philip Goldberg was indicted under several counts for unlawfully selling intoxicating liquors, the objection that one count was against Philip Holdberg was properly raised by motion in arrest of judgment.—People v. Goldberg, Ill., 122 N. E. 530.

29.——Corpus Delicti.—Although inculpatory admissions are not admissible, in the absence of evidence tending to establish the corpus delicti, evidence of commission of the offense, not by the defendant necessarily, but by some criminal agency, is a sufficient predicate for their admission.—Simmons v. State, Ala., 81 So. 137.

30.——Presence at Scene.—Mere presence of an accused when an offense is committed will not make him guilty, since there must be some character of guilty connivance or participation.—Davis v. State, Tex., 209 S. W. 749.

31.——Reindictment.—One entitled under Code 1913, c. 159, § 25 (sec. 5601), to count third unexcused term after first indictment as a want of prosecution thereon and discharged upon a nolle prosequi is entitled to a discharge from prosecution on second indictment for same offense returned several years thereafter; such dismissal and reindictment contravening spirit and purpose of statute.—State v. Crawford, W. Va., 98 S. E. 615.

32.——Venue.—The jurisdiction of a court in criminal matters is confined to offenses committed in county, unless special statute extends it beyond.—State v. Damerest, Me., 105 Atl. 858.

33. **Damages**—Lost Profits.—In an action for the price of a machine built by plaintiff for defendant, a counterclaim for lost profits because of delay in delivery of the machine cannot be maintained, unless special circumstances are shown with respect to which the parties must be deemed to have contracted.—Pusey & Jones Co. v. Combined Locks Paper Co., U. S. D. C., 255 Fed. 700.

34.——Present Worth.—In negligence case involving personal injuries, it was proper to instruct that the present worth rule does not apply in awarding compensation for pain, suffering, and inconvenience.—Sebastian v. Philadelphia & Reading Coal & Iron Co., Pa., 105 Atl. 887.

35. **Deeds**—Deed Poll.—The rule that the language in a deed poll must be construed most strongly against the grantor is not a favorite and is generally said to be one of last resort when all other rules of construction have failed. Virginian Ry. Co. v. Avis, Va., 98 S. E. 638.

36.——Delivery.—If father and mother, when they delivered to back official deeds to their children to take effect only on their deaths, intended to part with their custody and control and to have the deeds take effect as conveyances, the deeds were delivered.—Hudson v. Hudson, Ill., 122 N. E. 497.

37.——Repugnancy.—Where a deed or other written instrument contains clauses that are inconsistent with each other, such clauses, if possible, should be reconciled so that the intention of the maker as disclosed by the whole instrument shall be given effect, and this intention must not be defeated by a literal interpretation of any of the words of the instrument.—Houston Oil Co. of Texas v. Bunn, Tex., 209 S. W. 830.

38. **Divorce**—Desertion.—Where a husband by his intolerable treatment, which itself was cause for divorce, compelled his wife to leave his home, he was guilty of desertion, although himself continuing to reside in the matrimonial home.—Sutermeister v. Sutermeister, Mo., 209 S. W. 955.

39.——Desertion.—Under Civ. Code, § 103, providing that the husband may choose any reasonable place of living, and that if the wife does not conform thereto it is "desertion," the husband's right is not entirely arbitrary, but he must provide and establish a suitable home for his wife ere he can insist that she follow him.—Bibb v. Bibb, Cal., 179 Pac. 214.

40.——Habitual Drunkenness.—Habitual use of drugs, though it may cause a condition similar to that produced by the excessive use of intoxicating liquors, will not sustain an action for divorce based on the statutory cause of "habitual drunkenness."—Smith v. Smith, Del., 105 Atl. 833.

41. **Easements**—Restoring Status.—Defendant, who by his own chain of title had notice of complainants' easement in alley, and who at time he was notified not to obstruct could have restored alley at small expense, could not, by completing building encroaching on alley, deprive court of right to compel restoration of status.—Gulick v. Hamilton, Ill., 122 N. E. 537.

42. **Ejectment**—Burden of Proof.—It was not a part of plaintiff's case in ejectment to show what part of the lands were within defendant's inclosure and claimed by him.—Munger Securities Co. v. Martin, Mo., 209 S. W. 875.

43. **Eminent Domain**—Condition Precedent.—A contractor for the joint use of the railroads and the consent of the Public Utilities Commission are not conditions precedent to the right to condemn land for a connecting track.—Chicago, M. & St. P. Ry. Co. v. Franzen, Ill., 122 N. E. 492.

44. **Fixtures**—Mortgagee.—Mortgagee has no equitable claim to chattels subsequently annexed to realty, having parted with nothing on the faith of such chattels.—Beatrice Creamery Co. v. Sylvester, Col., 179 Pac. 154.

45. **Fraudulent Conveyances**—Relationship.—Relationship is merely a circumstance that may excite suspicion, but will not of itself amount to proof of fraud, in a suit by creditors to set aside a conveyance by the debtor.—Ayers Nat. Bank of Jacksonville v. Barber, Ill., 122 N. E. 533.

46. **Gifts**—Causa Mortis.—Where an owner of jewelry delivered it to a trust company, to be by it given to specified donees in case a certain operation she was about to undergo should result in death, but the operation was never performed, and death ultimately ensued from the malady to cure which the operation was intended, the donor did not die of the peril she contemplated, so as to make the gift a valid gift causa mortis.—Brind v. International Trust Co., Col., 179 Pac. 148.

47. **Guaranty**—Acceptance.—In an action to recover future credits under a guaranty, whereby defendant guaranteed payment of purchases of a company from plaintiff, it was necessary to aver that plaintiff gave notice to defendant of acceptance of the guaranty.—Ajax Rubber Co. v. Gam, Del., 105 Atl. 834.

48.——Fictitious Principal.—A guarantor is not liable to creditor when party named as principal debtor is a fictitious person, a real person having used a fictitious name, unless the grantor had knowledge that a fictitious person was named for real party as principal debtor, for a guaranty is not valid unless there is a valid claim against a principal.—Bishop Press Co. v. Lowe, Mo., 209 S. W. 962.

49. **Highways**—Local Improvements.—Railroad property is subject to assessment for a local improvement, as a highway, the same as other kinds of realty, the inquiry being to ascertain the enhancement in value or benefits to accrue from the construction of the improvement.—Missouri Pac. R. Co. v. Monroe County Road Improvement Dist., Ark., 209 S. W. 728.

50. **Homicide**—Corpus Delicti.—In prosecution for murder, two things were necessary to make out defendant's guilt, namely, death of deceased, and the criminal connection of defendant therewith.—Davis v. State, Tex., 209 S. W. 749.

51. **Insurance**—Deviation.—An intended deviation from the voyage described in a policy will not avoid the policy, where loss occurred before the point of deviation was reached; but it is avoided by an abandonment of the voyage, although the vessel was still on the intended course.—North British & Mercantile Ins. Co. v. H. Baars & Co., U. S. C. C. A., 255 Fed. 625.

52.——Ultra Vires.—An insurance company securing money under, and by means of an ultra vires act or contract is not justified in appropriating it and refusing to pay it back.—Trammell v. San Antonio Life Ins. Co., Tex., 209 S. W. 786.

53. **Landlord and Tenant**—Rent Reserved.—When rent is reserved, it is incident, though not inseparably, to the reversion, and the rent may be granted away, reserving the reversion, or the reversion may be granted away, reserving the rent by special words.—Winnisimmet Trust v. Libby, Mass., 122 N. E. 575.

54. **Libel and Slander**—Corporation.—A corporation may be the subject of an article which is libelous per se.—Den Norske Ameriekalinje Actiesselskabet v. Sun Printing & Pubilshing Ass'n, N. Y., 122 N. E. 463.

55. **Limitation of Actions**—Tolling of Statute.—The payment of interest by the principal in a promissory note tolls the statute as to any one whose undertaking is original with the principal, but does not interrupt the running of statute as to those whose undertaking is collateral, such as an indorser.—Highland Inv. Co. v. Kansas City Computing Scales Co., Mo., 209 S. W. 895.

56. **Malicious Prosecution**—Advice of Counsel.—Where defendant, in an action for malicious prosecution, concealed from his attorney a fact material to the question of plaintiff's probable guilt, a finding against his defense of advice of counsel was warranted.—Auener v. Norman, Cal., 179 Pac. 219.

57. **Master and Servant**—Assumption of Risk.—Servant does not assume risk arising from subsequent operation or unforeseen negligence of the master.—Shields v. W. R. Grace & Co., Ore., 179 Pac. 265.

58.——Employment. — Agreement, whereby first party advanced the money with which to buy stock of goods to be sold by second party, the proceeds to be first applied to repayment to first party of money advanced, and the profits thereafter to be equally divided, was, as between the parties a contract of employment.—Orr, Jackson & Co. v. Perry, Ala., 81 So. 150.

59. **Mortgages**—Validity.—That a wife is induced to execute a mortgage by husband's fraud and deception, in which mortgagee does not participate and of which he had no knowledge, does not affect its validity.—Smith v. Commercial Bank of Jasper, Fla., 81 So. 154.

60. **Municipal Corporations**—Local Improvement.—All preliminary steps required by statute to be taken before the passage of an ordinance for a local improvement should be strictly enforced and followed.—Village of Lovington v. Gregory, Ill., 122 N. E. 504.

61. **Navigable Waters**—Boundary. — Where land is bordered by a running stream, the boundary is shifting, going landward with erosion, and waterward with accretion, a rule expressly declared in Civ. Code, § 1014, and judicially extended, as at common law, to cases where the land is bounded by tidal water.—City of Oakland v. Buteau, Cal., 179 Pac. 170.

62. **Negligence**—Anticipation of Injury.—An injury that could not have been foreseen or reasonably anticipated by a person of ordinary prudence as the probable result of an act of alleged negligence is not actionable, nor is an injury or death that is not the actual or probable consequence of the act, and that would not have resulted from it, but for the interposition of some new and independent cause that could not have been anticipated.—Crane Co. v. Busdieker, U. S. C. C. A., 255 Fed. 664.

63.——Imputability.—Persons riding in a buggy or automobile, who have no control of the vehicle, are not necessarily negligent merely because their driver is negligent.—Schaefer v. Arkansas Valley Interurban Ry. Co., Kan., 179 Pac. 323.

64. **Officers**—Public Policy.—For reasons of public policy fiscal officers are held to a very strict liability for public funds intrusted to their care, and are required to assume all risk of loss and account for all funds going into their hands.—Leachman v. Board of Sup'rs of Prince William County, Va., 98 S. E. 656.

65. **Partnership**—Community Property. — A mere community of interest as owners of the profits from a particular adventure or business does not necessarily, of itself, constitute the co-owners partners.—Gorman v. Carlock, Okla., 179 Pac. 38.

66.——Holding Out.—Where third parties are concerned, a partnership may arise by operation of law without inquiry into, or in direct opposition to, the express intention of the parties.—Orr, Jackson & Co. v. Perry, Ala., 81 So. 150.

67. **Principal and Agent**—Accepting Benefits. —The principal will not be permitted to receive money belonging to another and keep it under the plea that the agent was not authorized to make the representations he did to secure the contract with plaintiff which the principal breached.—Trammell v. San Antonio Life Ins. Co., Tex., 209 S. W. 786.

68.——Burden of Proof.—Plaintiff, relying on an instrument as a contract of sale by defendant, rather than an unaccepted order, has the burden of showing, not only agency of the person signing it, but also that the making of the contract was within the scope of his authority. —Bovard v. Mergenthaler Linotype Co., Mo., 209 S. W. 965.

69. **Principal and Surety**—Contribution.—One signing a note as surety may then stipulate that he will not be liable for contribution with other sureties who signed before him.—Huffman v. Manley, W. Va., 98 S. E. 613.

70.——Partnership.—Ordinarily surety for a partnership will not be liable for the defaults of an individual after dissolution of partnership.—Peery v. Merrill, Okla., 179 Pac. 28.

71.——Strictissimi Juris.—A surety is entitled to stand upon the strict letter of his undertaking.—W. T. Raleigh Medical Co. v. Modde, Mo., 209 S. W. 958.

72. **Process**—Abuse of.—"Abuse of process," as distinguished from malicious prosecution and from false imprisonment, constitutes an independent cause of action.—Glidewell v. Murray-Lacy & Co., Va., 98 S. E. 665.

73. **Receivers**—Liens.—Court operating railroads under direction of receiver cannot create a priority of lien forbidden by the statutes.— Petition of Walker, Tenn., 209 S. W. 739.

74. **Sales**—Conditional Sale.—A conditional vendor, by accepting partial and overdue payments, waives strict compliance and cannot claim a forfeiture for non-payment, without giving the purchaser reasonable notice and an opportunity to perform.—Burdick v. Tum-A-Lum Lumber Co., Ore., 179 Pac. 245.

75.——Rescission.—If a buyer desired to rescind, it was incumbent upon him to promptly rescind and to return or offer to return the property, unless it was wholly worthless.—Outcault Advertising Co. v. Schlerbaum, Mo., 209 S. W. 982.

76.——Time of Essence.—In mercantile contracts, such as contracts for the manufacture and sale of goods and the like, it is generally held that the parties have intended to make time the essence of the contract.—Jensen v. Goss, Cal., 179 Pac. 225.

77. **Specific Performance**—Part Performance. —In order to enforce father's oral contract to convey land to his son in consideration of a home and care, it was not indispensable to a part performance thereof that the son should have taken possession or made permanent improvements, in order to take the case out of the statute of frauds, where the contract did not contemplate possession until the father's death. Aldrich v. Aldrich, Ill., 122 N. E. 472.

78. **Subrogation**—Equity.—Doctrine of subrogation is of purely equitable origin and nature; its object being to place a charge where it ought to rest, by compelling payment of a debt by him who ought in equity to pay it.— Northern Trust Co. v. Consolidated Elevator Co., Minn., 171 N. W. 265.

79.——Right to.—Subrogation will not be allowed so as to do injury to the rights of others. —Williams v. Libby, Me., 105 Atl. 855.

80. **Taxation**—Intangible Assets.—Intangible assets and rolling stock of railroad are of such a nature and character that they have no actual situs in any particular county or district.— State v. Houston & T. C. Ry. Co., Tex., 209 S. W. 820.

81.——Movables.—The just valuation of movables of a foreign corporation habitually used and employed in a state, according to which the state may tax them, need not be limited to mere worth of the articles considered separately, but may include, as well, the intangible value due to the organic relation of the property in the state to the corporation's whole system operating in many states.—Union Tank Line v. Wright, U. S. S. C., 39 S. Ct. 276.

82. **Trade-Marks and Trade-Names**—Trade-Name.—One may adopt a trade-name, consisting of a combination of words, none of which are capable of exclusive appropriation.—Yellow Cab Co. v. Cook's Taxicab & Transfer Co., Minn., 171 N. W. 269.

83. **Trusts**—Constructive Trust.—Breach of a verbal agreement entered into before a foreclosure sale, wherein mortgagee agreed to buy in the property and to allow mortgagor to redeem, thus preventing mortgagor from bidding himself or obtaining others to bid for him, establishes a trust ex maleficio, and the statute of frauds does not bar relief.—Johnson v. Jameson, Mo., 209 S. W. 919.

84.——Fraud.—A constructive trust will only arise in case of some fraud or advantage taken in the procurement of the conveyance.—Delfosse v. Delfosse, Ill., 122 N. E. 484.

85. **Wills**—Attestation.—In absence of evidence that testator could see his will while witnesses were signing it, or act of attestation, will cannot be admitted to probate.—Quirk v. Pierson, Ill., 122 N. E. 518.

86.——Intention.—The primary rule is to give the instrument the effect intended by the testator, and this interpretation must be ascertained from the language used, the nature and extent of the property bequeathed, the status and surroundings of the beneficiaries, etc.—McNiell v. St. Aubin, Tex., 209 S. W. 781.

87.——Statutory Right.—Testator's right to devolve property by will and the right of devisees and legatees thereunder are statutory rights.—Woodville v. Pizzati, Miss., 81 So. 127.

88.——Undue Influence.—The "undue influence" exercised upon a testator must amount to over-persuasion, coercion, or force sufficient to destroy his will power, as contradistinguished from influence arising from affection or the impulse to gratify the wishes of one beloved.— Kleinlein v. Krauss, Mo., 209 S. W. 933.